IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| ROBERT LEE THACKER, |) | |
|-------------------------|---|-----------|
| |) | |
| Petitioner, |) | |
| |) | |
| V. |) | 1:11CV863 |
| |) | |
| NC ATTORNEY GENERAL ROY |) | |
| COOPER, |) | |
| |) | |
| Respondent. |) | |
| | | |

O-R-D-E-R

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on October 25, 2011, was served on the parties in this action. Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Petitioner's filing is construed as a petition under 28 U.S.C. § 2254, and that the petition is dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244. A

Judgment dismissing this action will be entered contemporaneously with this Order.

Finding no substantial issue for appeal concerning the denial of a constitutional right

affecting the conviction, nor a debatable procedural ruling, a certificate of appealability

is not issued.

This the 5th day of March, 2013.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge

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